

Calendar No. 1251

77TH CONGRESS }
2d Session }

SENATE

{ REPORT
No. 1212

MARTIN N. MAYRATH

MARCH 26 (legislative day, MARCH 5), 1942.—Ordered to be printed

Mr. BROWN, from the Committee on Claims, submitted the following

REPORT

[To accompany H. R. 710]

The Committee on Claims, to whom was referred the bill (H. R. 710) for the relief of Martin N. Mayrath, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The facts are fully set forth in House Report No. 1778, Seventy-seventh Congress, second session, which is appended hereto and made a part of this report.

[H. Rept. No. 1778, 77th Cong., 2d sess.]

The Committee on Claims, to whom was referred the bill (H. R. 710) for the relief of Martin N. Mayrath, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

The purpose of the proposed legislation is to pay to Martin N. Mayrath, of Dodge City, Kans., the sum of \$31.50 for accrued annual leave earned by him while in the employ of the Coast and Geodetic Survey from April 18, 1936, until July 6, 1938, inclusive.

STATEMENT OF FACTS

Mr. Mayrath, an employee of the Coast and Geodetic Survey, requested that he be separated from service on April 18, 1938, and that his pay be stopped as of July 6, 1938, in order to compensate him for annual leave accumulated; that this was agreed to by his supervisor, and his annual-leave certificates were approved by the Washington office of the United States Coast and Geodetic Survey; through some error in the personnel office he was discontinued from service as of April 18 instead of July 6. In the Seventy-sixth Congress, there was enacted Private Law 26, compensating Ruth Dornsife for annual leave accumulated by her.

Appended hereto is the report of the Department of Commerce, together with the report of the Comptroller General, together with other pertinent evidence.

DEPARTMENT OF COMMERCE,
Washington, January 12, 1940.

HON. AMBROSE J. KENNEDY,
Chairman, Committee on Claims,
House of Representatives, Washington, D. C.

MY DEAR MR. CHAIRMAN: In your communication of September 29, you asked for the views of the Department on H. R. 7471, a bill for the relief of Martin N. Mayrath.

Mr. Mayrath was an employee of the United States Coast and Geodetic Survey, assigned to a field party. His employment was terminated July 6, 1938, without his accrued annual leave having been taken. Under the ruling of the Comptroller General in 16 C. G. 899 there is no authority for the payment for leave not granted, but accrued, prior to separation from the service.

As Mr. Mayrath's services were terminated without prejudice, the Department has no objection to the enactment of H. R. 7471. It is noted, however, that the bill states the period of Mr. Mayrath's employment to have been from April 18, 1938, to July 7, 1938. The records of the Department show that Mr. Mayrath was discharged on July 6, 1938, and, accordingly, the bill should be amended to so state.

Very sincerely yours,

J. M. JOHNSON,
Acting Secretary of Commerce.

GENERAL ACCOUNTING OFFICE,
Washington, October 12, 1939.

Hon. AMBROSE J. KENNEDY,
*Chairman, Committee on Claims,
House of Representatives.*

MY DEAR MR. CHAIRMAN: Further reference is made to your letter of September 29, 1939, acknowledged October 2, 1939, requesting a report on bill H. R. 7471, Seventy-sixth Congress, first session, entitled "A bill for the relief of Martin N. Mayrath," which proposes to authorize and direct payment out of any money in the Treasury not otherwise appropriated "* * * the sum of \$31.50 to Martin N. Mayrath, Dodge City, Kansas, in full settlement of all claims against the United States for annual leave earned while he was in the employ of the Coast and Geodetic Survey, from April 18, 1938, to July 7, 1938: * * *"

As the claim is for leave of absence, the granting of which is an administrative matter, the records of this office would not and do not disclose facts relative thereto.

However, the wording of the bill would appear to indicate that Martin N. Mayrath may not have been granted administratively any or all of the annual leave of absence to which he was entitled while employed by the Coast and Geodetic Survey from April 18, 1938, to July 7, 1938, and that he is now separated from the service.

In decision of July 16, 1937 (17 Comp. Gen. 48), it was stated as follows:

"In the absence of statutory terms otherwise providing leave of absence under the act of March 14, 1936 (49 Stat. 1161), effective January 1, 1936, controlling in your case, is authorized to be granted in kind only. Hence, it has been the settled rule that in the absence of a statute specifically so providing there is no authority to pay employees after separation from the service for leave not taken (5 Comp. Gen. 753; 7 id. 83; 8 id. 471; 12 id. 602; 13 id. 179; 14 id. 443; 16 id. 28).

"The act of March 14, 1936, supra, makes a grant of leave in kind only; that is, the right to be absent from duty for the prescribed period without loss of pay while retaining a status as one of the 'civilian officers and employees of the United States' included within the purview of the law. There is no provision of the law, expressed or implied, authorizing a payment in lieu of leave not granted to a former officer or employee who no longer has a status upon which the statute may operate, irrespective of the reason why the leave was not granted. The granting of leave is entirely an administrative matter. Accordingly, notwithstanding the circumstances under which you failed to receive the leave alleged to have accrued to you, it is sufficient to say that misunderstandings, mistakes, or negligence in the administration of the law, may not form the basis of a claim against appropriated moneys for compensation not otherwise authorized."

Many claims or protests of employees have been received on the basis that the administrative office concerned has failed or refused to grant them the annual leave of absence to which they were legally entitled prior to separation from the service. Under the rule above quoted this office has uniformly denied the claims or refused to entertain the protests. As favorable consideration of this claim would be unfair to many similar claimants I am unable to recommend favorable action on the bill.

Sincerely yours,

FRED H. BROWN,
Comptroller General of the United States.

STATEMENT

STATE OF KANSAS,
County of Ford, ss:

To Whom It May Concern:

From April 18, 1938, to July 7, 1938, I was on duty working for the United States Coast and Geodetic Survey, Lt. A. C. Thorson, chief of party, as triangulation recorder on a field party in California, at \$1,620 per annum. I resigned on July 7, 1938, and went to Kansas.

Leave slips were sent in to Washington from the field party, but through an error I was shown on the pay roll as being discharged at own request July 7, instead of being on leave with pay. The error on the pay roll was caught in the offices of the United States Coast and Geodetic Survey in Washington, but not until the accounts had already gone to the General Accounting Office. The leave slips were approved by Washington office of the United States Coast and Geodetic Survey, whereupon Lieutenant Thorson issued me a check for \$31.50 leave pay (7 days, at \$4.50 per day) ($2\frac{1}{2}\%$ months at $2\frac{1}{2}$ days per month equals $5\frac{1}{2}$ days; leave ran through a week end, adding $1\frac{1}{2}$ days and making a total of 7 days).

Later, the account was disallowed by the General Accounting Office, and Lieutenant Thorson received a disallowance of the \$31.50. He was now out of his own pocket the \$31.50 and I felt obligated to repay him.

The \$31.50 is a just debt of the United States Government which it has not as yet paid, due to an error on a pay voucher, which I feel can and should in all honesty be rectified.

MARTIN N. MAYRATH.

Subscribed and sworn to before me this 25th day of August 1941.

[SEAL]

J. E. YOUNG, County Clerk.

Term expires January 1943.

[PRIVATE—No. 260—76TH CONGRESS]

[CHAPTER 711—1ST SESSION]

[H. R. 5491]

AN ACT To pay salary of Ruth Dornsife.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Treasury be, and he is hereby, authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$104.83 to Ruth Dornsife, Toledo, Ohio, in full settlement of all claims against the United States for annual leave not granted her while she was in the employ of the Farm Security Administration, from December 16, 1935, to August 10, 1937: *Provided*, That no part of the amount appropriated in this Act in excess of 10 percentum thereof shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim, and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000.

Approved, August 11, 1939.

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